

REMARKS

Claims 1-49 are pending in this application. All of the pending claims were rejected. Claims 1, 14, and 26-29 are currently amended. Reconsideration is requested.

Claims 1-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sistanizadeh in view of Wang. The Office concedes that Sistanizadeh fails to teach managing optical communication paths for the user without exposing network topological information to the user. However, the Office asserts that Wang teaches this feature at column 14, line 14 through column 15, line 15. Applicant respectfully traverses. The primary and secondary references are fundamentally contradictory because Sistanizadeh teaches revealing the intervening network topology to the user, and Wang teaches concealing even the existence of the intervening network from the user. In section "D. Service Level Manager (SLM) - Preferred implementations" Sistanizadeh teaches that agents capture data indicative of network performance, and that data is utilized in conjunction with topological information for service level management. Sistanizadeh plainly states that "the service level manager provides an understanding of the topology of the network."¹ If the network topological information were withheld, as the Office suggests would result from the cited combination of references, then Sistanizadeh would be unable to perform service level management, i.e., the teaching would become inoperable. The cited combination is therefore improper because (a) there cannot be a motivation to combine where the combination defeats the operation of the teaching; and (b) the combination does not actually yield the claimed invention. Withdrawal of the rejection is therefore requested.

The Office should also take note of an additional distinction between the (new) Wang reference and the claimed invention. Wang does not actually teach the concealing network

topology, as asserted by the Office. Wang actually teaches that “transparency is defined as concealing from the user and remote application **the fact that a distributed network connect them.**”² (emphasis added) Concealing the existence of an intervening network is not the same as concealing the topology of an intervening network. The user without knowledge of the existence of an intervening network will have the perspective that a sender/receiver is logically close, whereas the ASON user has knowledge that a wide or medium area distributed network separates the peers. Having knowledge of the existence of the intervening network allows user applications to anticipate and react to operation and performance variations, e.g., latency, that typically differ between LAN and WAN environments.

The new Examiner has maintained the rejections of claims 1, 14, 26, 29 and 39 under 35 U.S.C. 112, first paragraph for containing subject matter which was not described in the Specification. In particular, the Office bases the rejection on the clause “whereby the user need not have the network topological information in order to obtain a new optical communication path.” Applicant respectfully traverses, and requests that the new Examiner consult with her SPE on this issue. As described at page 21, line 26 through page 22, line 14:

In the hybrid/proxy architecture, authentication and flooding are handled by the OSS, as shown in FIG. 16. The OSS maintains authentication information for multiple OSA-enabled users, and also maintains a group identifier for each OSA-enabled user. After authenticating an OSA-enabled user, the OSS floods the advertisement on behalf of the OSA-enabled user, for example, using a mechanism similar to Proxy-PAR ... The hybrid/proxy architecture is similar to the distributed flooding architecture, and therefore has many of the same advantageous and disadvantageous characteristics as the distributed flooding architecture. However, because the OSS rather than the OSA-N floods the advertisement, **the OSS does not need to “leak” topological information to the OSA-enabled user. Therefore, there is no confusion of the separation between the NNI and the UNI.**

¹ Sistanizadeh at column 17, lines 65-66

² Column 14, lines 34-36

separation between the NNI and the UNI. (emphasis added)

Perhaps showing the claimed limitation adjacent to a portion of the passage from the Specification will be helpful:

the claim: “the user need not have the network topological information”

the spec: “the OSS does not need to “leak” topological information to the OSA-enabled user.”

The Office further states, in support of the rejection, that “it is unclear how and why does the OSS not needing the ‘leak’ topological information to enable an OSA user.” One example of the “how and why” is recited in the section of the Specification quoted above, i.e., **“because the OSS rather than the OSA-N floods the advertisement**, the OSS does not need to ‘leak’ topological information to the OSA-enabled user.” (emphasis added) Further, claims 1, 14 and 26-29 are currently amended to emphasize the “how and why” of this distinctive limitation. Withdrawal of the rejection is therefore requested.

In addition to withdrawal of the rejections based on sections 103 and 112, Applicant requests that the finality of the November 20, 2006 Office Action be withdrawn. The Office Action of November 20, 2006 (by the previous Examiner) relied upon a reference that does not qualify as prior art because it was not “published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent.” The previous Examiner made that erroneous rejection Final. However, since the Office was obliged to issue a new Office Action because of the error of the Office, Applicant requests

requests that the finality of the November 20, 2006 Office Action be officially withdrawn.

Applicant would also like to point out that although the Advisory Action dated February 22, 2007 promised that "another non-final rejection will be mailed shortly," the rejection in the Office Action dated March 9, 2007 is made Final. Applicant therefore asserts that in the interest of fairness this Response should be entered and considered without forcing Applicant to submit a costly RCE.

This application is now considered to be in condition for allowance and such action is earnestly solicited. Should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone the undersigned, Applicants' Attorney at 978-264-4001 so that such issues may be resolved as expeditiously as possible.

Respectfully Submitted,

/June 21, 2007/
Date

/Holmes W. Anderson/
Holmes W. Anderson, Reg. No. 37,272
Attorney/Agent for Applicant(s)
McGuinness & Manaras LLP
125 Nagog Park
Acton, MA 01720
(978) 264-6664

Docket No. 120-174

Dd: 5/9/2007